UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case No. 2:08-CR-0026
	:	
vs.	:	JUDGE SMITH
	:	
SERGIO ARREOLA-OVIEDO,	:	
	:	
Defendant.	:	

DEFENDANT'S SENTENCING MEMORANDUM

On approximately June 23, 2008, the United States Probation Office disclosed the final presentence investigation report that was prepared in the above-captioned case. This matter is scheduled for sentencing on Wednesday, September 10, 2008, at 1:30 p.m. Defendant Sergio Arreola-Oviedo, through undersigned counsel, submits this sentencing memorandum.

I. Introduction

In *United States v. Booker*, 543 U.S. 220, 245 (2005), the Supreme Court's remedial opinion rendered the guidelines effectively advisory. The Court stressed that a sentencing court must still take the guidelines into account at sentencing along with the factors set forth in § 3553(a). *Id*. at 264. The *Booker* court also instructed appellate courts to review a sentencing decision for reasonableness. *Id*. at 260-262.

Recently, the Supreme Court decided two cases which together explain in detail the mechanics of Booker's remedial holding. *Gall v. United States*, ___ U.S. ___ 128 S. Ct. 586 (December 10, 2007); *Kimbrough v. United States*, __ U.S. __, 128 S. Ct. 558 (December 10, 2007). In *Gall*, the court instructed that the sentencing court should first calculate the applicable guideline range. The sentencing court must then give both the government and the defendant "an opportunity to argue for whatever sentence they deem appropriate." *Id*. at 590. The sentencing court should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by either party. *Id*. In doing so, the sentencing court may not presume that the guideline range is reasonable. *Id*. In the event the sentencing court decides to impose a variance sentence, i.e., one outside of the recommended guidelines range, the sentencing court must consider the extent of the deviation and ensure that the degree of the variance is sufficiently justified. *Id*. Mr. Arreola-Oviedo respectfully submits that under this analysis a sentence below the guideline sentencing range is appropriate.

II. Correct Guideline Calculations

According to the 2007 edition of the United States Sentencing Guidelines Manual, Sergio Arreola-Oviedo's conviction for violating 21 U.S.C. § 846 triggers § 2D1.1 of the guidelines manual and therefore yields a base offense level of thirty-two (32), which corresponds to Mr. Arreola-Oviedo being held accountable for more than one (1), but less than three (3) kilograms of heroin.

As noted in Mr. Arreola-Oviedo's objection letter, which is included as an addendum to the final PSR, Mr. Arreola-Oviedo submits that he is entitled to a four-point reduction pursuant to U.S.S.G. §2D1.1(a)(3)and §3B1.2, reducing his base offense level of 32 to 28. *See* Defendant's Exhibit 1[1]. Because Mr. Arreola-Oviedo meets the criteria set forth in subdivisions (1) through (5) of § 5C1.2(a), a two level reduction is applied, further reducing Mr. Arreola-Oviedo's base offense level to 26.

[1]Due to technical difficulties in scanning the Defendant's Exhibits, all Exhibits will be filed manually with the Court, with a copy provided to Judge's Chambers and opposing counsel.

Mr. Arreola-Oviedo's adjusted offense level would be 26; however, Mr. Arreola-Oviedo is entitled to a three (3) level reduction: (1) USSG § 3E1.1(a) - two (2) levels for Mr. Arreola-Oviedo's acceptance of responsibility; and (2) USSG § 3E1.1(b) - one (1) level for Mr. Arreola-Oviedo's timely notification of his intention to enter a guilty plea, which then yields an adjusted offense level of twenty-three (23).

Mr. Arreola-Oviedo agrees with the probation officer's calculation of his criminal history category of I. Thus, with a corrected base offense level of 23 and a criminal history category of I, his correct sentencing guideline range is 46 to 57 months.

III. 18 U.S.C. §3553(a) Factors

The Court must next determine what sentence is "sufficient, but not greater than necessary," to satisfy Congress' sentencing mandate that was codified in 18 U.S.C. §3553(a)(2). Mr. Arreola-Oviedo relies on the following factors: (1) the nature and circumstances of the offense and the history and characteristics of the defendant, 18 U.S.C. §3553(a)(1); and (2) the need for the sentence imposed to reflect the seriousness of the offense, to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant, 18 U.S.C. §3553(a)(2)(A)-(c).

A. ***Nature and Circumstances of the Offense and History and Characteristics of the Defendant*: 18 U.S.C. §3553(a)(1)**

Sergio Arreola-Oviedo was born on March 4, 1978, in Tepic, Nayarit, Mexico. PSR at ¶38. He has resided in Tepic, Nayarit, his whole life. Mr. Arreola-Oviedo is the youngest of six children. *Id.* at ¶38. Mr. Arreola-Oviedo is very close to both his immediate and extended family. There has been a tremendous outpouring of support for Mr. Arreola-Oviedo from his family back in Mexico, as evidenced by the multiple letters submitted on his behalf. Mr. Arreola-Oviedo's family members describe him as kind, honest, hard-working, a good father, husband and son, well respected in the community, and dedicated to his work. The following family members wrote character reference letters on behalf of Mr. Arreola-Oviedo (*See* Defendant's Exhibit 2)[2]:

(1) Martha Oviedo Nuñez (mother);

(2) Jose Luis Arreola Oviedo (brother);

(3) Martha Arreola Oviedo (sister);

(4) Adriana Bautista Bravo (sister-in-law);

(5) Rosalinda Oviedo Nuñez (aunt);

(6) Rosa Carolina Acebo Oviedo (cousin);

(7) Tiare Viridiana Arreola Bautista (niece);

(8) Diana Cristina López Oviedo (niece); and

(9) Emma Licia Amézquita Oviedo (cousin).

Mr. Arreola-Oviedo has also been characterized by his friends and neighbors as a well-respected, honorable member of the community. The following friends and neighbors wrote character reference letters on behalf of Mr. Arreola-Oviedo (*See* Defendant's Exhibit 3)[3]:

(1) Maritza Lopez Olivares

(2) Sergio Sedano Moya II

(3) Lourdes Andrade de Luna

(4) Ricardo Sedano Moya

(5) Sonia A. Vazquez Zuñiga

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[2]English translations and original Spanish-language documents provided.

[3]English translations and original Spanish-language documents provided.

(6) Maria Luisa Lopez Juro

(7) Emmanuel Carrillo Gomez

At the age of 19, Mr. Arreola-Oviedo began serving in the Mexican National Military Service. He served active duty in the National Military service for three and ½ years, when he became a reservist. *See* Defendant's Exhibit 4[4].

In 1998, at the age of twenty, Mr. Arreola-Oviedo became employed as a firefighter. PSR at ¶45. Over the years, Mr. Arreola-Oviedo has attended numerous training courses and received multiple awards and recognitions for his service. PSR at ¶44; Defendant's Exhibit 5. He was elected by his superiors to attend training programs in the United States as well, such as those offered by Texas A&M University, the Oklahoma State University, and the National Fire Prevention Association. *See* PSR at ¶40, Defendant's Exhibit 5. Mr. Arreola-Oviedo moved up through the ranks of the "Heroic Fire Brigade" of the State of Nayarit, ultimately becoming a First Commanding Officer. In addition to fighting fires, Mr. Arreola-Oviedo was also on the fire department's diving squad, performing underwater rescues. *See* Defendant's Exhibits 4 and 6[5].

Perhaps most impressive about Mr. Arreola-Oviedo's career as a firefighter is the fact that he was called upon to teach courses to other firefighters participating in statewide training programs, and assisted with the development of some of these training programs. Some of the subjects taught by Mr. Arreola-Oviedo include: basic principals of firefighting; formation of fire blockades; rappelling techniques; fire prevention; fighting fires in confined spaces; proper use of fire hoses and hydrants; combat and control of urban fires; and search and rescue; among others. Mr. Arreola-

[4]English translations and original Spanish-language documents provided.

[5]English translations and original Spanish-language documents provided.

Oviedo also participated in a program where he went to elementary and preschools and taught students and their parents about fire safety and fire prevention. *See* Defendant's Exhibit 5.

Many of Mr. Arreola-Oviedo's fellow firefighters have submitted character reference letters on his behalf, detailing the high regard in which they hold Mr. Arreola-Oviedo. Mr. Arreola-Oviedo's colleagues describe him as a trusted friend and advisor, in addition to being a co-worker, and they also detail the pride Mr. Arreola-Oviedo took in doing his job. The following members of Mr. Arreola-Oviedo's fire department submitted letters on his behalf (*See* Defendant's Exhibit 6)[6]:

(1) Jose Alfredo Lopez Saucero (supervisor);

(2) Alberto Sanchez Valdivia (co-worker);

(3) Mario Alberto Sena Garcia (Emergency Medical Technician);

(4) Carlos Alejandro Plascensia Mojarro (supervisee); and

(5) Francisco Jose Gomez Gomez (volunteer firefighter).

In 1997, Mr. Arreola-Oviedo married Maria Orquedia Janeth López. PSR at ¶39. Mr. Arreola-Oviedo and Maria subsequently had two children, Sergio Andres, now age 9, and Braulio Adrian, now age 4. *Id.* Maria describes Mr. Arreola-Oviedo as an excellent father and husband, and above all, her friend. *See* Defendant's Exhibit 7[7]. Evident in the many letters submitted by Mr. Arreola-Oviedo's friends, family members, and co-workers, is that Mr. Arreola-Oviedo is and always has been an extremely devoted father to his children. He has expressed extreme remorse over the effect his criminal actions will have on his children, and the length of time they will be without a father.

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[6]English translations and original Spanish-language documents provided.

[7]English translations and original Spanish-language documents provided.

Approximately four months prior to his commission of the instant offense, Mr. Arreola-Oviedo and his wife became separated, in part because, as his wife alludes, Defendant's Exhibit 7, he was at times overly dedicated to his work. PSR ¶39.[8] In the months leading up to his offense, though only earning $700.00 per month, Mr. Arreola-Oviedo was helping to financially maintain two households, that of his mother, with whom he resided during his separation from his wife, and his former family home where his wife and children still resided.

Shortly after he separated from his wife, Mr. Arreola-Oviedo began experiencing difficulties breathing. In December 2007, he visited a doctor who performed a chest x-ray and diagnosed him with a lung disease. *See* PSR at ¶41. Defendant's Exhibit 8[9]. His doctor informed him that his work as a firefighter, which involved breathing smoke from burning buildings, was a factor which contributed to his lung condition. Mr. Arreola-Oviedo was unable to afford the medication needed to treat his condition. PSR at ¶23. Near the first of this year came the worst news of all for Mr. Arreola-Oviedo, whose love for his job is evident through the training and accolades he has received, as well as through the words of his co-workers and family members: if he wanted to regain his health, he would not be able to continue working as a firefighter.

Mr. Arreola-Oviedo was struggling under the financial pressure to maintain two households on an extremely low income, ill and unable to afford his medication, and faced with the prospect of finding new employment, when he was approached and recruited to become involved in this offense. Mr. Arreola-Oviedo had traveled to the United States many times to participate in job-related training, and had a valid visa for this purpose. PSR at ¶13, 15. Mr. Arreola-Oviedo's trips to the United States and his heroism as a firefighter gained local attention when he was featured in a story in the local newspaper. PSR at ¶15. A Hispanic male known to Mr. Arreola-Oviedo only as Luis approached him at his place of business. Luis informed Mr. Arreola-Oviedo that he was aware that Mr. Arreola-Oviedo traveled to the United States. *Id.* Luis asked Mr. Arreola-Oviedo to transport marijuana into the United States in exchange for $3,000.00. Desperately in need of additional income, and faced with great emotional stressors, Mr. Arreola-Oviedo ultimately agreed to become involved in the offense, under the mistaken belief that he would be smuggling marijuana into the United States. PSR at ¶23.

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[8]As noted in the PSR, Mr. Arreola-Oviedo and his wife have been writing each other since his incarceration and Mr. Arreola-Oviedo has high hopes for salvaging his relationship with his wife.

[9]English translations and original Spanish-language documents provided.

When Mr. Arreola-Oviedo was approached by Luis, he had neither a criminal record nor history of drug abuse. Luis offered him money to take a package of what Mr. Arreola-Oviedo believed to be marijuana from Tepic, Nayarit, Mexico, to Columbus, Ohio. Luis provided Mr. Arreola-Oviedo a pair of shoes in which the heroin was already securely wrapped. Mr. Arreola-Oviedo was given the phone number of a man in Columbus, known only to him as "Tio," and instructed to call Tio when he arrived in Columbus. Mr. Arreola-Oviedo did not obtain the heroin; he did not package the heroin; he made no arrangements with the people who were to receive the heroin once in the United States; he did not participate in negotiating any of the terms of the delivery. He was unaware of the type or quantity of drugs contained in the shoes he wore across the Bridge of the Americas. Mr. Arreola-Oviedo's role was that of a courier or "mule," and he did not have full knowledge of the scope of the conspiracy's activities.

Mr. Arreola-Oviedo is not arguing that his actions are of little consequence. Mr. Arreola-Oviedo has recognized and affirmatively accepted responsibility for his criminal conduct in this case.

PSR at ¶23. He has expressed deep remorse for the foolishness of his illegal actions. He understands that, although he was only a courier, he still had a harmful impact on society; however, what this Court should take note of is the fact that he played only a minor role in these activities and, therefore, his sentence should properly reflect his relative position within the larger conspiracy.

Based on the nature and circumstances of the offense and the history and characteristics of Mr. Arreola-Oviedo, a sentence below the low end of the advisory guideline range is an appropriate sentence in this case.

B. *The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, to Afford Adequate Deterrence to Criminal Conduct, and to Protect the Public From Further Crimes of the Defendant, 18 U.S.C. §3553(a)(2)(A)-(c)*

Mr. Arreola-Oviedo's lack of criminal history makes him less culpable and less likely to recidivate.

"A defendant's record of past criminal conduct is directly relevant to [the purposes of sentencing]." U.S.S.G. §4A1.1, introductory commentary. "A defendant with a record of prior criminal behavior is more culpable than a first offender and thus more deserving of greater punishment." *Id.* Conversely then, a defendant with no record of criminal behavior is less culpable and more deserving of lesser punishment. *See, id.* Mr. Arreola-Oviedo has no criminal history points. *See, e.g.*, PSR at ¶35-37. As a matter of policy, he is less culpable than another defendant with even one prior conviction eligible to receive criminal history points. The Court properly considers this fact when it considers the seriousness of the offense.

If this Court were to impose a below guideline sentence, the seriousness of the offense would not be denigrated and both Arreola-Oviedo and others would be deterred from repeating his tragic mistakes. To be an effective deterrent, the sentence must not only educate defendants as to the seriousness of the offense, but should make others in the community "aware that similar actions will be punished." *United States v. Coleman*, 370 F. Supp. 2d 661, 681 (S.D. Ohio 2005). To this end, others will be deterred from following in Arreola-Oviedo's footsteps given the particulars of his situation.

Based on Mr. Arreola-Oviedo's total lack of criminal history, stable employment, absence of illicit drug use, and level of education, the likelihood that he will recidivate is very low. Accordingly, Mr. Arreola-Oviedo submits that the Court's goal of affording adequate deterrence to future criminal conduct of this defendant and to protecting the public from this defendant's future criminal conduct can be achieved through a below-guidelines sentence.

The Sentencing Commission ("the Commission") has recognized that defendants, like Mr. Arreola-Oviedo, with minimal criminal history have "substantially lower recidivism rates." *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* ("Measuring Recidivism") (May 2004), at p. 15, available at: http://www.ussc.gov/publicat/Recidivism_General.pdf (last visited September 4, 2008). The Commission has further recognized that the Sentencing Guidelines do not adequately account for this factor. *Id.* Criminal history is a powerful risk measurement tool; generally speaking, "[r]ecidivism rates rise as criminal history points increase." *Id.* Defendants with "minimal prior history" (i.e., defendants with zero criminal history points) have a significantly lower rate of recidivism than any other group of offenders. *Id.*; see also, *A Comparison of the Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Commission Salient Factor Score*, (Jan. 4, 2005), at p. 15, available at: http://www.ussc.gov/publicat/RecidivismSalientFactorCom.pdf. (last visited September 4, 2008).

Additionally, Mr. Arreola-Oviedo has a substantial support network in his community. The support Mr. Arreola-Oviedo receives from his family and friends is also a factor that contributes to his decreased likelihood of recidivism.

IV. **Conclusion**

Under any of the factors discussed above, or based on a combination of them all, Mr. Arreola-Oviedo submits that it would be appropriate to sentence him to a sentence below the low end of the advisory guideline range.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this Sentencing Memorandum was electronically served this 4th day of September 2008, upon Kevin Kelley, Assistant United States Attorney, 303 Marconi Blvd., 2nd Floor, Columbus, Ohio 43215, through this Court's ECF system.

Respectfully submitted,

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